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RELATING TO

THE HISTORY OF IOWA

EDITED BY

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INSTRUCTOR IN THE STATE UNIVERSITY OF IOWA

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NUMBER IV.

INTRODUCTION.

THE act of June 28th, 1834,¹ gave to the territory west of the Mississippi river *a local constitutional status*.² It did more than this. It brought the inhabitants of that territory within the pale of constitutional government. Practically, however, they were still without the benefits of organized constitutional government. And it was not until the Territory of Wisconsin was established July 4th, 1836, that they became possessed of such benefits.³

B. F. S.

¹ See No. III. of this series, p. 76.

² *Ibid.*, p. 45.

³ See p. 78 of this number.

THE TERRITORY OF WISCONSIN.

AN ACT ESTABLISHING THE TERRITORIAL GOVERNMENT OF WISCONSIN.¹

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the third day of July next, the country included within the following boundaries shall constitute a separate Territory, for the purposes of temporary government, by the name of Wisconsin; that is to say: Bounded on the east, by a line drawn from the northeast corner of the State of Illinois, through the middle of Lake Michigan, to a point in the middle of said lake, and opposite the main channel of Green Bay, and through said channel and Green Bay to the mouth of the Menomonie river; thence through the middle of the main channel of said river, to that head of said river nearest to the Lake of the Desert; thence in a direct line, to the middle of said lake; thence through the middle of the main channel of the Montreal river, to its mouth; thence with a direct line across Lake Superior, to where the territorial line of the United States last touches said lake north-

¹ "The sovereignty of this section of the north-western territory is yet in the United States, and in pursuance of that clause of the Constitution giving to congress the power to dispose of, and make all needful rules and regulations respecting, the territory of the United States, the act establishing the territorial government of Wisconsin was passed. By that act a government was established or created, composed of executive, legislative and judicial branches. The governor is commander-in-chief of the militia, is to approve of laws passed by the legislature, can grant pardons, can commission officers, and shall take care that the laws be faithfully executed. The legislative power extends to all rightful subjects of legislation. But the laws of the governor and legislative assembly shall be submitted to, and if disapproved by the congress of the States, the same shall be null and of no effect. That is, the laws passed by the legislature are valid until annulled by the disapproval of congress. The judicial power of the Territory is vested in a supreme and other courts, which possess chancery and common law jurisdiction. They are courts of record. And the district courts possess the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States. Writs of error and appeals from the final

west; thence on the north, with the said territorial line, to the White-earth river; on the west, by a line from the said boundary line following down the middle of the main channel of White-earth river, to the Missouri river, and down the middle of the main channel of the Missouri river to a point due west from the northwest corner of the State of Missouri; and on the south, from said point, due east to the northwest corner of the State of Missouri; and thence with the boundaries of the States of Missouri and Illinois, as already fixed by acts of Congress. And after the said third day of July next, all power and authority of the Government of Michigan in and over the Territory hereby constituted, shall cease: *Provided*, That nothing in this act contained shall be construed to impair the rights of person or property now appertaining to any Indians within the said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the authority of the Government of the United States to make any regulations respecting such decisions of the supreme court are allowed to the supreme court of the United States in cases exceeding in amount \$1,000. Hence it is apparent, that by this law, a municipal corporation, or government, is created, subject to the control of and immediately connected with the government of the United States. By virtue of its incorporation, and as a necessary means of protecting its rights in all contracts, the Territory can maintain an action in the courts within its limits. By virtue of its incorporation, all the powers and functions of a sovereignty exist—subject only to the supervision and control of the general government. The officers in all branches of the government of the Territory are entitled to similar rights and privileges, and are subject to similar pains and penalties, to those of a sovereign State. And similar provisions are made for the settlement and adjustment of claims against the Territory, and for the disbursement of territorial funds, to those in existence as a sovereign State. For all necessary purposes of government, Wisconsin is a sovereignty, and should be entitled to the same immunities. It is a Territory of the United States, and is considered thereby a part of the United States or immediately connected therewith. For these reasons we come to the conclusion, that the Territory of Wisconsin cannot be sued in the courts of the Territory in the absence of express authority of law for that purpose."

—*The Territory of Wisconsin v. Doty and Others*, 1 Pinney, 405.

Indians, their lands, property, or other rights, by treaty, or law, or otherwise, which it would have been competent to the Government to make if this act had never been passed: *Provided*, That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing the Territory hereby established into one or more other Territories, in such manner, and at such times, as Congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States.

SEC. 2. *And be it further enacted*, That the executive power and authority in and over the said Territory shall be vested in a Governor, who shall hold his office for three years, unless sooner removed by the President of the United States. The Governor shall reside within the said Territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the Legislative Assembly before they shall take effect; he may grant pardons for offences against the laws of the said Territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a Secretary of the said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings on or before the first Monday in December in each year, to the President of the United States; and at the same time, two copies of the laws to the Speaker of the House of Representa-

tives, for the use of Congress. And in case of the death, removal, resignation, or necessary absence, of the Governor from the Territory, the Secretary shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the Governor during such vacancy or necessary absence.

SEC. 4. *And be it further enacted,* That the Legislative power shall be vested in a Governor and a Legislative Assembly.¹ The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue four years. The House of Representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for the members of the Council, and whose term of service shall continue two years. An apportionment shall be made, as nearly equal as practicable, among the several counties, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the said members of the Council and House of Representatives shall reside in and be inhabitants of the district for which they may be elected. Previous to the first election, the Governor of the Territory shall cause the census or enumeration of the inhabitants of the several counties in the Territory to be taken and made by the sheriffs of the said counties, respectively, and returns thereof made by said sheriffs to the Governor. The first election shall be held at such time and place, and be conducted in such manner, as the Governor shall appoint and direct: and he shall, at the same time, declare the number of members of the Council and House of Representatives to which each of the counties is entitled under this act.

¹ "It [the Legislative Assembly] is the legislative branch of the government of this Territory, and its members are legally and inherently possessed of all such privileges as are necessary to enable them, with freedom and safety, to execute the trust reposed in them by the people who elected them."—*Anderson v. Rountree*, 1 Pinney, 122.

The number of persons authorized to be elected having the greatest number of votes in each of the said counties for the Council, shall be declared, by the said Governor, to be duly elected to the said Council; and the person or persons having the greatest number of votes for the House of Representatives, equal to the number to which each county may be entitled, shall also be declared, by the Governor, to be duly elected: *Provided*, The Governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the Legislative Assembly shall meet at such place on such day as he shall appoint;¹ but, thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties to the Council and House of Representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said Legislative Assembly; but no session, in any year, shall exceed the term of seventy-five days.

SEC. 5. *And be it further enacted*, That every free white male citizen of the United States, above the age of twenty-

¹“The members of the legislative assembly of this Territory being elected by the people, and empowered by the organic law, to legislate on all rightful subjects of legislation, while assembled for the purpose of legislation, and for a reasonable time to go to, and return home from, the seat of government, ought to be considered in reason, and, from the nature and dignity of their office, as invested with equal immunities with the members of any other representative body. * * * * *

“All the statute law we have on the subject of this privilege is an act of the Territorial legislature, on page 157 of the Statutes of Wisconsin. It is there provided that ‘no member of the legislative assembly shall be liable to arrest on a service of any civil process issued by any of the courts of this Territory during any such session of the legislative assembly, or for ten days previous to the commencement or subsequent to the termination of any session; and any member in arrest during the period of such exemption shall be entitled to an immediate discharge on any application to any judge, supreme court commissioner or justice, in any county in which such an arrest may have been made.’ * * * There is no doubt but that the legislature may, in its discretion, abridge or take away a privilege of its own members.”—*Anderson v. Rountree*, 1 Pinney, 121, 122, 123.

one years, who shall have been an inhabitant of said Territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters at all subsequent elections shall be such as shall be determined by the Legislative Assembly: *Provided*, That the right of suffrage shall be exercised only by citizens of the United States.

SEC. 6. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation;¹ but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the Governor and Legislative Assembly shall be submitted to, and, if disapproved by the Congress of the United States, the same shall be null and of no effect.²

SEC. 7. *And be it further enacted*, That all township officers and all county officers, except judicial officers, justices of the peace, sheriffs, and clerks of courts, shall be elected by the people, in such manner as may be provided by the Governor and Legislative Assembly. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, shall appoint, all judicial officers, justices of the

¹ The statutes of the Territory afford the most satisfactory interpretation of the phrase "all rightful subjects of legislation:" for, while the legislative power was, perhaps, not fully exercised, the statutes indicate the scope and content of that power, and in the absence of judicial data offer the only legitimate interpretation.

"By the sixth section of the organic law, the legislative power of the Territory is extended to all rightful subjects of legislation. This extends to the legislative assembly, the power to direct the manner in which all writs may be obtained. It has the power to prescribe all rules, requirements, forms and ceremonies in obtaining, issuing and serving writs and it can, by law, declare what officers shall or may administer oaths."—Smith et al. v. Odell, 1 Pinney, 451.

² "That is, the laws passed by the legislature are valid until annulled by the disapproval of congress."—The Territory of Wisconsin v. Doty and Others, 1 Pinney, 406.

peace, sheriffs, and all militia officers, except those of the staff, and all civil officers not herein provided for.¹ Vacancies occurring in the recess of the Council shall be filled by appointments from the Governor, which shall expire at the end of the next session of the Legislative Assembly; but the said Governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the said Legislative Assembly.

SEC. 8. *And be it further enacted,* That no member of the Legislative Assembly shall hold or be appointed to any office created or the salary or emoluments of which shall have increased whilst he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term; and no person holding a commission under the United States, or any of its officers, except as a militia officer, shall be a member of the said Council, or shall hold any office under the Government of the said Territory.

SEC. 9. *And be it further enacted,* That the Judicial power of the said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace.² The

¹“By this last clause it would seem, that some other officers might be created in addition to those enumerated in that law. In the exercise of the power granted to the legislative assembly, acts have been passed, and are now in force, authorizing the appointment of supreme court commissioners and conferring upon them extensive powers. * * * * There is no doubt, but that the legislative assembly can by law, create such a commissioner, and confer upon him the power to perform such ministerial duties, as may be deemed necessary in the administration of the laws.” —Smith et al. v. Odell, 1 Pinney, 451.

²“These are the courts for the disposition of all the judicial business of the Territory—and it is not competent for the legislative assembly to create any more. The creation of any additional judicial tribunal, is in the congress of the United States. The legislative assembly is authorized to limit, by law, the jurisdiction of the several courts above mentioned, both appellate and original—but no farther.”—Smith et al. v. Odell, 1 Pinney, 451.

“The first legislature that convened in and for this Territory, at Belmont, enacted a law on the 8th December, 1836, entitled ‘An act concerning the supreme and district courts, and defining their jurisdiction and powers.’ This act was evidently passed in pursuance of the organic law.” —Judson v. Hindman and Others, 1 Pinney, 94.

supreme court shall consist of a chief justice and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of Government of the said Territory, annually, and they shall hold their offices during good behavior.¹ The said Territory shall be divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: *Provided, however,* That justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court shall appoint its clerk, who shall keep his office at the place where the court may be held, and the said clerks shall also be the registers in chancery; and any vacancy in said office of clerk happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue until the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions of the said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court, shall a trial by a jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been

¹ "The supreme court of the Territory of Wisconsin, while adjudicating in cases arising under the laws of the Territory, is a legislative court, must conform its decisions to the laws of the Territory, and is not subject to the restriction referred to in the said seventh article of the amendments to the constitution, as would be the case were it deciding causes arising under the constitution and laws of the United States."—*Rogers v. Bradford*, 1 Pinney, 427.

appointed. And writs of error and appeals from the final decisions of the said supreme court shall be allowed and taken to the Supreme Court of the United States, in the same manner, and under the same regulations, as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States. And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error, and appeals from the final decisions of the said courts, in all such cases, shall be made to the supreme court of the Territory, in the same manner as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerk of the district court of the United States in the northern district of the State of New York receives for similar services.

SEC. 10. *And be it further enacted,* That there shall be an Attorney for the said Territory appointed, who shall continue in office four years, unless sooner removed by the President, and who shall receive the same fees and salary as the attorney of the United States for the Michigan Territory. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the President, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the Marshal of the district court of the United States for the northern district of the State of New York; and shall, in addition, be paid the sum of two hundred dollars, annually, as a compensation for extra services.

SEC. II. *And be it further enacted,* That the Governor, Secretary, Chief Justice and Associate Judges, Attorney, and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary, to be appointed as aforesaid, shall, before they act, as such respectively take an oath or affirmation before some judge or justice of the peace in the existing Territory of Michigan, duly commissioned and qualified to administer an oath or affirmation to support the constitution of the United States, and for the faithful discharge of the duties of their respective offices; which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken, and such certificate shall be received and recorded by the said Secretary among the Executive proceedings. And, afterwards, the Chief Justice and associate Judges, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some judge or justice of the Territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand five hundred dollars for his services as Governor and as superintendent of Indian affairs. The said Chief Justice and Associate Judges shall each receive an annual salary of eighteen hundred dollars. The Secretary shall receive an annual salary of twelve hundred dollars. The said salaries shall be paid quarterly, at the Treasury of the United States. The members of the Legislative Assembly shall be entitled to receive three dollars each per day, during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually-traveled route. There shall

be appropriated, annually, the sum of three hundred and fifty dollars, to be expended by the Governor to defray the contingent expenses of the Territory, and there shall also be appropriated annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws and other incidental expenses; and the Secretary of the Territory shall annually account to the Secretary of the Treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. *And be it further enacted*, That the inhabitants of the said Territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the Territory of the United States north-west of the river Ohio, by the articles of the compact contained in the ordinance for the Government of the said Territory, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven; and shall be subject to all the conditions and restrictions and prohibitions in said articles of compact imposed upon the people of the said Territory.¹

¹ See No. III. of this series for Ordinance of 1787.

"The ordinance of 1787, which was the fundamental law of Wisconsin at the time the present suit was commenced, declares that 'no man shall be deprived of his liberty or property but by the judgment of his peers or the law of the land.' But for these wise restraints upon legislative power, the right of government, as a sovereign authority, to take the property of individuals for public use, would be absolute; and that, too, without even allowing any direct compensation."—*Newcomb v. Smith*, 2 Pinney, 133.

"They [the people] were given, it is true, certain *rights*, before the present organization of the general government, and a solemn compact was made with them that those rights should not be taken away without their consent; * * * * The rights guaranteed to the people of the territory of Wisconsin were not those secured to the citizens of the states by the federal constitution, but those contained in the 'articles of compact,' in the ordinance of 1787, which articles were to remain forever unalterable, unless by common consent. That was their only fundamental law; and the constitution of the United States had no operation further than was necessary to enforce such 'laws of congress' as were applicable to the Territory and its inhabitants. * * * * This latter

The said inhabitants shall also be entitled to all the rights, privileges, and immunities, heretofore granted and secured to the Territory of Michigan, and to its inhabitants, and the existing laws of the Territory of Michigan shall be extended over said Territory, so far as the same shall not be incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed, by the Governor and Legislative Assembly of the said Territory of Wisconsin; and further, the laws of the United States are hereby extended over, and shall be in force in, said Territory, so far as the same; or any provisions thereof, may be applicable.

SEC. 13. *And be it further enacted,* That the Legislative Assembly of the Territory of Wisconsin shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said session, or as soon thereafter as may by them be deemed expedient, the said Governor and Legislative Assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible, which place, how-

instrument [the ordinance of 1787] * * * * * has ever been regarded by the people of the North West territory as the palladium of their legal and political rights. * * * * * To the ordinance, then, and not to the federal constitution, did the people of the Territory look; for it was never enacted that, in addition, they should have the rights under the constitution which are guaranteed to the citizens of the several States, or, in fact, any other rights or immunities than those contained in the ordinance and the subsequent laws of congress. * * *
* * * Here we have, in comprehensive language, the strongest and most sacred guaranty of the enjoyment of rights and property."—From the dissenting opinion in the case of *Newcomb v. Smith*, 2 Pinney, 142-146.

"All the legislation of the territory of Wisconsin should have been consistent with the principles engrafted into this charter of human rights and civil liberty [*i. e.* the Ordinance of 1787]. The legislature could not curtail any rights conferred upon the people by the ordinance, nor confer any rights withheld."—*Reed v. Wright*, 2 Green (Ia.), 22.

"The power of the Wisconsin legislature was derived from Congress which extended to all rightful subjects of legislation, and subject also to all the restrictions and provisions of the ordinance of 1787."—*Reed v. Wright* 2 Green (Ia.), 27.

ever, shall thereafter be subject to be changed by the said Governor and Legislative Assembly. And twenty thousand dollars, to be paid out of any money in the Treasury, not otherwise appropriated, is hereby given to the said Territory, which shall be applied by the Governor and Legislative Assembly to defray the expenses of erecting public buildings at the seat of government.

SEC. 14. *And be it further enacted,* That a Delegate to the House of Representatives of the United States, to serve for the term of two years, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as have been granted to the Delegates from the several Territories of the United States to the said House of Representatives. The first election shall be held at such time and place or places, and be conducted in such manner, as the Governor shall appoint and direct. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given to the person so elected.

SEC. 15. *And be it further enacted,* That all suits, process and proceedings, and all indictments and informations which shall be undetermined on the third day of July next, in the courts held by the additional judge for the Michigan Territory, in the counties of Brown and Iowa;¹ and all suits, process and proceedings, and all indictments and informations which shall be undetermined on the said third day of July, in the county courts of the several counties of Crawford, Brown, Iowa, Dubuque, Milwalke [Milwaukie], and Des Moines, shall be transferred to be heard, tried, prosecuted and determined, in the district courts hereby established, which may include the said counties.

SEC. 16. *And be it further enacted,* That all causes which shall have been or may be removed from the courts held by the additional judge for the Michigan Territory, in the counties of Brown and Iowa, by appeal or otherwise, into the supreme

¹ See No. III. of this series, p. 63.

court for the Territory of Michigan, and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of the said supreme court, and transferred to the supreme court of said Territory of Wisconsin, there to be proceeded in to final determination, in the same manner that they might have been in the said supreme court of the Territory of Michigan.

SEC. 17. *And be it further enacted,* That the sum of five thousand dollars be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to be expended by and under the direction of the Legislative Assembly of said Territory, in the purchase of a library for the accommodation of said Assembly, and of the supreme court hereby established.

Approved, April 20, 1836.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 10.*

AN ACT MAKING APPROPRIATIONS FOR THE CIVIL AND DIPLOMATIC EXPENSES OF GOVERNMENT FOR THE YEAR ONE THOUSAND EIGHT HUNDRED AND THIRTY-SIX.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, to be paid out of any unappropriated money in the Treasury, viz:

* * * * *

For the Governor, judges, secretary, district attorney, and marshal, and contingent expenses, of the Wisconsin Territory, nine thousand, nine hundred dollars.

Compensation and mileage of the members of the Legislative Council, and to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses of said Territory, nine thousand four hundred dollars.

For the public buildings and library of said Territory, twenty-five thousand dollars.

* * * * *

Approved, May 9, 1836.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 25.*

AN ACT FOR LAYING OFF THE TOWNS OF FORT MADISON AND BURLINGTON, IN THE COUNTY DES MOINES, AND THE TOWNS OF BELLEVIEW, DU BUQUE, AND PERU, IN THE COUNTY OF DU BUQUE, TERRITORY OF WISCONSIN, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the tracts of land in the Territory of Wisconsin including the towns of Fort Madison and Burlington, in the county of Des Moines; Belleview, Du Buque, and Peru, in the county of Du Buque; and Peru, in the county of Du Buque; and Mineral Point, in the county of Iowa, shall, under the direction of the Surveyor General of the public lands, be laid off into town lots, streets, avenues, and the lots for public use called the public squares, and into out-lots having regard to the lots and streets already surveyed, in such manner and of such dimensions as he may think proper for the public good and the equitable rights of the settlers and occupants of the said towns: *Provided,* The tracts of land so to be laid off into town-lots, &c. shall not exceed the quantity of one entire section, nor the town-lots one-half of an acre; nor shall the out-lots exceed the quantity of four acres each. When the survey of the lots shall be completed, a plat thereof shall be returned to the Secretary of the Treasury, and within six months thereafter the lots shall be offered to the highest bidder, at public sale, under the direction of the President of the United States, and

at such other times as he shall think proper; *Provided*, That no town-lot shall be sold for a sum less than five dollars: *And provided further*, That a quantity of land of proper width, on the river banks, at the towns of Fort Madison, Bellevue, Burlington, Du Buque, and Peru, and running with the said rivers the whole length of said towns, shall be reserved from sale, (as shall also the public squares,) for public use, and remain for ever for public use, as public highways, and for other public uses.

SEC. 2. *And be it further enacted*, That it shall be the duty of the said Surveyor to class the lots already surveyed in the said towns of Fort Madison, Burlington, Bellevue, Du Buque, Peru, and Mineral Point, into three classes, according to the relative value thereof, on account of situation and eligibility for business, without regard however to the improvements made thereon; and previous to the sale of said lots as aforesaid, each and every person or persons, or his, her, or their legal representatives, who shall heretofore have obtained from the agent of the United States a permit to occupy any lot or lots in the said towns, or who shall have, by building or enclosure, actually occupied or improved any lot or lots in the said towns, or within the tracts of land hereby authorized to be laid off into lots, shall be permitted to purchase such lot or lots by paying therefor, in cash, if the same fall within the first class as aforesaid, at the rate of forty dollars per acre; if within the second class, at the rate of twenty dollars per acre; and if within the third class, at the rate of ten dollars per acre: *Provided*, That no one of the persons aforesaid shall be permitted to purchase, by authority of this section, more than one acre of ground to embrace improvements already made.

SEC. 3. *And be it further enacted*, That the sum of three thousand dollars be, and the same is hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, to defray the expenses of surveying the lands

covering the said towns of Fort Madison, Burlington, Bellevue, Du Buque, Peru, and Mineral Point.

Approved, July 2, 1836.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 70.*

AN ACT TO AMEND AN ACT ENTITLED "AN ACT FOR LAYING OFF THE TOWNS OF FORT MADISON AND BURLINGTON, IN THE COUNTY OF DES MOINES, AND THE TOWNS OF BELLEVUE, DU BUQUE, AND PERU, IN THE COUNTY OF DU BUQUE, AND MINERAL POINT, IN THE COUNTY OF IOWA, TERRITORY OF WISCONSIN, AND FOR OTHER PURPOSES," APPROVED JULY SECOND, EIGHTEEN HUNDRED AND THIRTY-SIX.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all acts and duties required to be done and performed by the Surveyor for the Territory of Wisconsin, under the act to which this is an amendment, shall be done by a board of commissioners of three in number, any two of whom shall be a quorum to do business; said commissioners to be appointed by the President of the United States, and shall, previous to their entering upon the discharge of their duties, take an oath or affirmation to perform the same faithfully and impartially: *Provided,* That the action of the commissioners appointed under the present act shall not interfere with any of the acts performed by the Surveyor General, prior to the time of the passage hereof, in pursuance of instructions under the act to which this is amendatory.

SEC. 2. *And be it further enacted,* That the said commissioners shall have power to hear evidence and determine all claims to lots arising under the act to which this is an amendment; and for this purpose, the said commissioners are authorized to administer all oaths that may be necessary, and reduce

to writing all the evidence in support of claims, to pre-emption presented for their consideration; and when all the testimony shall have been heard and considered, the said commissioners shall file with the proper register and receiver for the district within which the towns are situated respectively, the testimony in each case, together with a certificate in favor of each person having the right of pre-emption under the provisions of the act of which this is amendatory; and upon making payment to the proper receiver of public money for the lot or lots to which such person is entitled, the receiver shall grant a receipt therefor, and the register issue certificates of purchase, to be transmitted to the Commissioner of the General Land Office, as in other cases of the sale of public lands.

SEC. 3. *And be it further enacted*, That the proper register and receiver of public moneys, after the board of commissioners have heard and determined all the cases of pre-emption under the act to which this is an amendment, shall expose the residue of the lots to public sale to the highest bidder, after advertising the same in three public newspapers at least three months prior to the day of sale, in the same manner as is provided for the sale of public lands in other cases; and after paying the commissioners the compensation hereafter allowed them, and all other expenses incident to the said survey and sale, the receiver of the land office shall pay over the residue of the money he may have received from the sale of lots aforesaid, by pre-emption as well as at public auction, into the hands of the trustees of the respective towns aforesaid, to be expended by them in the erection of public buildings, the construction of suitable wharves, and the improvement of the streets in the said towns of Fort Madison, Burlington, Bellevue, Du Buque, Peru and Mineral Point.

SEC. 4. *And be it further enacted*, That the commissioners appointed to carry this act into effect, shall be paid by the receiver of public moneys, of the proper land district, six dol-

lars each, per day, for their services, for every day they are necessarily employed.

Approved, March 3, 1837.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 178.*

AN ACT TO GIVE THE APPROVAL AND CONFIRMATION OF
CONGRESS TO THREE SEVERAL ACTS OF THE LEGISLA-
TIVE ASSEMBLY OF THE TERRITORY OF WISCONSIN
INCORPORATING BANKS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following acts of the Territorial Legislature of the Territory of Wisconsin, viz: an act entitled "An act to incorporate the stockholders of the Bank of Milwaukee," an act entitled "An act to incorporate the stockholders of the Miners' Bank of Dubuque,"¹ and an act entitled "An act to incorporate the stockholders of the Bank of Mineral Point," be, and the same are hereby severally and respectively approved and confirmed by Congress, with the following limitations and conditions, that is to say: that neither of said banks shall issue bills or notes for circulation, until one-half of the amount of their respective capitals shall have been actually paid in; and that, to enable the directors named in the said charters respectively to comply with this limitation and restriction, they shall be authorized to make calls, according to the provisions

¹ The Miners' Bank of Dubuque has an interesting history. Some important references to that history are: "An act to provide for the payment of the debt due to the Miners' Bank of Du Buque," passed by the Legislative Assembly of the Territory of Iowa in June, 1845; "An act to repeal the charter of the Miners' Bank of Du Buque, and to provide for winding up of the affairs of the same," passed by the Legislative Assembly of the Territory of Iowa in May, 1845; Miners' Bank of Dubuque v. United States, 1 Green (Ia.), 553; Miners' Bank of Dubuque v. Thomas, 4 Green, 336; Miners' Bank of Dubuque v. State of Iowa, 12 Howard, 1.

contained in the said charters, to an amount not exceeding, at any one time, forty per cent. upon the whole stock subscribed by each stockholder, and shall not be restricted to ten per cent. at any one call, as is provided in the said charters; and that neither of said banks shall have any authority to enlarge or augment its capital, or to make it larger, at any time, than the sum of two hundred thousand dollars, without the consent and approbation of Congress previously obtained; and that neither of the said banks shall, at any time, owe, either by bond, bill, note, or other contract, over and above its actual deposits, an amount to exceed twice the amount of its capital stock actually paid in, instead of the limitation in this respect contained in the said charters respectively; and that each of the said banks shall have complied with all the requirements of their respective charters, as altered, modified, and restricted by this act, so as to enable them to commence the business of banking, and shall actually have commenced banking on or before the first day of January next, or their charters, or the charters of such of them as shall have failed to comply with this limitation, shall be void and of no effect; and the acceptance of said acts of incorporation, by the grantees or stockholders respectively, shall be deemed and taken as acceptances, subject to the conditions and limitations herein prescribed; and any infringements upon, or violation of, the provisions and requirement of this act, or of the limitations and restrictions therein contained, on the part of either of the said institutions, shall forfeit its charter, and put an end to its corporate powers and privileges.

Approved, March 3, 1837.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 198.*

OF THE NATURE OF THE ACT OF CONGRESS ORGANIZING THE TERRITORY OF WISCONSIN.¹

THE act of congress organizing this Territory is in the nature of a constitution of a State. It is supreme, and the legislative assembly cannot pass an act in opposition to, or in violation of it. The courts cannot be required to enforce such an act. It should be treated as a nullity.

—*Smith et al. vs. Odell, 1 Pinney (Wis.), 454.*

SUCH are the provisions of the organic law, which is a constitution to us.

—*Barker vs. Baxter, 1 Pinney (Wis.), 409.*

IT is to these acts of congress that the people of the territory looked for their legal and political rights. They are:

First. The ordinance of 1787.

Second. The organic act of the territory of Wisconsin, passed in 1836.

—*Newcomb vs. Smith, 2 Pinney (Wis.), 142.*

THE sovereignty of this section of the north-western territory is yet in the United States, and in pursuance of that clause of the Constitution giving to congress the power to

¹ Commonly known and referred to as the "*Organic Law*," or "*Organic Act*." For the text of this act see p. 78 of this number.

dispose of, and make all needful rules and regulations respecting, the territory of the United States, the act establishing the territorial government of Wisconsin was passed. By that act a government was established or created, composed of executive, legislative and judicial branches. * * * *

* Hence it is apparent, that by this law, a municipal corporation, or government, is created, subject to the control of and immediately connected with the government of the United States.

—*The Territory of Wisconsin vs. Doty and Others*, 1 Pinney (Wis.), 405.

THE organic law is binding upon the legislature of the Territory, as the constitution of a State is upon the action of its legislature; but it is a mere act of congress, subject to its amendment, modification or repeal. Under the constitution, it was competent for congress to legislate directly for the Territory; but, as this would be inconvenient, and probably not consistent with the immediate or local wants or interests of the people, the Territorial government was created by the organic law, wherein the governor and legislative assembly are authorized to discharge their respective duties therein referred to, for the interest and protection of the people.

—*The United States vs. Hatch*, 1 Pinney (Wis.), 189.

